



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street, Third Floor
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May 21, 2020 MEMO ENDORSED:

By ECF

The Honorable Paul G. Gardephe
United States District Court
Southern District of New York
40 Foley Square, Room 2204
New York, New York 10007

The application is granted. The conference previously scheduled for May 28, 2020 will take place on July 23, 2020 at 10 a.m.

SO ORDERED.

Re: *The New York Times Co., et. al. v. Food and Drug Admini*
19 Civ. 5640 (PGG)

A handwritten signature in black ink, reading "Paul S. Sandephe", is written over the typed name.

Dear Judge Gardephe:

Dated: May 22, 2020

This Office represents the United States Food and Drug Administration (“FDA”) in the above-captioned action brought by *The New York Times* and two of its reporters under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). I write respectfully on behalf of the parties to provide a joint status report and to jointly request adjournment of the May 28, 2020, initial conference. Dkt. Nos. 16-18.

As we previously informed the Court, plaintiffs’ request sought records “pertaining to the Digital Health Software Precertification (Pre-Cert) Program.” *See* Dkt. No. 1-1 (FOIA request). In particular, plaintiffs sought “[a]ll email correspondence between Jan. 1, 2017, and the present, that includes Bakul Patel and Linda Ricci” of the Food and Drug Administration (FDA) and parties with email addresses containing certain specified domain names and also containing particular keywords or variants of those keywords. *See id.*

As the parties had agreed, by January 31, 2020, the FDA completed four productions of documents responsive to plaintiffs’ FOIA request, totaling approximately 6,254 pages. On March 27, 2020, plaintiffs provided a letter to defendant outlining concerns with and questions about certain redactions to the records. On April 24, 2020, the FDA responded to plaintiffs’ letter, including by answering some of plaintiffs’ questions, further explaining the reasons for some of its redactions, and agreeing to revise redactions to some documents in its productions. On May 1, 2020, the FDA provided plaintiffs with further information regarding its prior productions and made an additional document production that revised redactions to some of the documents in its prior productions. Plaintiffs are still in the process of reviewing the FDA’s revised document production to determine if they have any additional concerns.

The parties have had progress conferring about the FDA’s productions, and would like to complete this process before having an initial pretrial conference, as the parties’ discussions

could potentially result in the resolution of this matter without the need for summary judgment briefing. Accordingly, the parties respectfully request that the Court adjourn the initial pretrial conference scheduled for May 28, 2020, at 10 AM to a date convenient for the Court after June 26. The undersigned counsel is currently unavailable from July 9 through July 17. If the Court grants the request, the parties request that they submit another joint status report 7 days before the rescheduled initial conference. This is the parties' fourth request for an adjournment of the initial conference.

We thank the Court for its consideration of this joint status report.

Respectfully submitted,

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Southern District of New York

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cc: Counsel of record (by ECF)